

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI**

KELLY MARIE AND SCOTT SIMLER,  
AND LINDA J. GARTNER

Plaintiffs,

v.

DUBUQUE PAINT EQUIPMENT  
SERVICES, INC., et al.

Defendants.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 2:17-CV-00030 ERW

**MEMORANDUM AND ORDER**

This matter comes before the Court on Plaintiffs Kelly Simler and Scott Simler's Motion to Reconsider or in the Alternative Convert May 29, 2018 Order to Final Judgment [108].

Plaintiffs' request a reconsideration of the Court's Order on Defendant FFE Transportation Services, Inc. and Roy G. Brice's Motion for Summary Judgment because it was contrary to controlling law. Plaintiffs also request that this Court's Order on Defendant FFE Transportation Services, Inc. and Roy G. Brice's Motion for Summary Judgment be converted under Rule 58(a) to allow for an appeal.

Plaintiffs do not cite to any case law or identify any facts in their request for reconsideration because the Court's Order on Defendant FFE Transportation Services, Inc. and Roy G. Brice's Motion for Summary Judgment was contrary to controlling law. Accordingly, the Court has no basis to believe its Order was contrary to controlling law and therefore denies Plaintiffs' request.

Additionally, Plaintiffs' request to convert an order to a final judgment under Rule 58(a) is unclear and has already been decided by this Court [101]. Pursuant to this Court's decision on

May 29, 2018, this Court found that the reasons cited by the parties were insufficient for certifying the May 29, 2018, order for appeal. On September 6, 2018, Plaintiffs' dismissed Defendants Dubuque Paint Equipment Services, Inc. and Kim A. Ross without prejudice [106]. This dismissal does not alter the Court's analysis regarding converting its prior order into a final judgment. Additionally, Plaintiffs do not cite to any additional case law which could be considered by this Court to convert its prior order into a final judgment. This Court has no basis to alter its prior ruling on this exact issue and therefore denies Plaintiffs' request unless the Plaintiffs' Motion to Dismiss is with prejudice.

Accordingly,

**IT IS ORDERED** that Plaintiffs Kelly Simler and Scott Simler's Motion to Reconsider or in the Alternative Convert May 29, 2018 Order to Final Judgment [108] is **DENIED**.

So Ordered this 26th day of September, 2018.



---

**E. RICHARD WEBBER**  
**SENIOR UNITED STATES DISTRICT JUDGE**